

GILLETTE'S CONVICTION UPSET

WRONG TO INDICT HIM, APPELLATE COURT HOLDS.

And Orders Indictment Quashed and the Former Mutual Life Vice-President Discharged—Four Out of Five Justices Say It Was Illegal—Jerome to Appeal.

The conviction of Walter R. Gillette, formerly vice-president of the Mutual Life Insurance Company, was reversed yesterday by the Appellate Division of the Supreme Court. The five Justices who heard the appeal were unanimous in finding that the conviction was illegal and based on insufficient evidence, but four of them go further and hold that he should never have been indicted at all. These four Justices, constituting a majority of the court, order the indictment quashed and the defendant discharged.

Dr. Gillette was indicted for perjury in having testified falsely before the Grand Jury on May 11, 1906, in a John Doe proceeding concerning his account with the Dobbie Ferry Bank that the money was his own, whereas the Grand Jury found it was really held by him as trustee for the Mutual Life and had come from that company's funds. He was tried before Justice Dowling in October last, found guilty and sentenced to serve six months in the penitentiary. He got a certificate of reasonable doubt and was allowed to give bail pending the outcome of his appeal.

Justices Ingraham, Houghton, Scott and McLaughlin concur in finding that Gillette was indicted illegally, that the indictment itself is fatally defective and that the conviction was based on insufficient evidence, but dissent from the dismissal of the indictment and the discharge of Dr. Gillette. He holds that there should be a new trial.

Justice McLaughlin writes a lengthy opinion setting forth the views of the majority of the court. He holds that the indictment was illegal in that it charged a crime which was not a crime at the time it was made, and that the evidence was insufficient to sustain the conviction.

The insurance investigation developed a serious situation as to the management of life insurance companies, and it may be, and very likely is, that some of the companies are liable to, and should be, punished criminally for what they did, but when this is done it must be done according to the law of the State.

Our is a government of law, and public clamor, no matter how loud or long continued, is not evidence, nor is it a justification for judicial action. It is a matter of the highest regard to the people of the State that persons who commit crimes should be punished, but no more so than that they should be punished in a legal way. If the constitutional and statutory provisions have been violated in the indictment, then it had better not be done, because to do so would be nothing less than the act of the mob under the guise of law.

Justice McLaughlin, reviewing the circumstances under which Dr. Gillette gave the testimony before the Grand Jury on which he was indicted, points out that "the investigation which the Grand Jury had under consideration at the time the defendant is alleged to have committed perjury, while ostensibly directed against John Doe et al., was in fact one against the defendant himself and other officers of insurance companies."

Dr. Gillette came as much within the scope of the investigation as if he had been designated by name, and therefore, Justice McLaughlin says, it was a violation of his constitutional right to require him to testify before the Grand Jury and take an oath.

The Justice adds: When he took the oath he thereupon became a witness, and should not be required to attend before that body, much less be sworn by it, and if he is and an indictment is found it should be set aside upon a motion, and if not, if the fact appears upon the trial, it will invalidate a conviction if one be had. Here it sufficiently appears in this record to say nothing of the appeal from the order denying a motion to set aside the indictment—that the defendant's constitutional rights were violated when he was required to attend and testify before the Grand Jury.

Justice McLaughlin goes on to say that the demurrer to the indictment before the trial should have been sustained. He says that the testimony given by Dr. Gillette was not material matter under investigation, and he concludes that the conviction was not material except in an investigation against Dr. Gillette himself, in which case he should not have been compelled to give testimony under oath. Justice McLaughlin then says:

Finally, after a careful consideration of the record I am of the opinion that at the conclusion of the trial a verdict should have been directed for the defendant upon the ground that the People had failed to prove that he committed perjury in testifying as he did. When the defendant's entire testimony is considered, it seems to me one cannot but be satisfied that he fully and frankly testified under oath. Justice McLaughlin then says:

The account in the Dobbie Ferry Bank was his personal account. The bank was a question of fact, and the relation of debtor and creditor existed between him and the bank. He was the only one who could draw the money out of the bank and the fact that it had been originally given to him to be used in the interest of the insurance company in no way changed the nature of the account. It was his personal account, precisely the same. Money was given to him from time to time by the president of the company, at whose direction they were paid out. The amount, which varied from a few hundred to several thousand dollars, was kept in his safe until the bank account was opened, when he deposited \$5,000.

Even if it be said that the answers were misleading, in that he did not at once fully explain as to the matter it did not harm him. Immediately following such answers and before he left the witness stand he told the whole truth with reference to the account, and the source from which the fund came. No one was misled, no one was deceived and no one was injured. There is absolutely no evidence to justify a finding by the jury that he "willfully, knowingly and corruptly" testified falsely. Even if it be assumed that the answers were false and made with the intention of misleading or deceiving, an indictment for perjury cannot be predicated thereon, inasmuch as immediately thereafter he fully explained the nature of the account and the source from which the fund came.

A judicial investigation or trial has for its sole object the ascertainment of the truth, that justice may be done. It is not the duty of a witness to tell the truth by telling severe penalties upon those who do not. This inducement would be destroyed if a witness could not correct a false statement by running a risk of being indicted and convicted for perjury.

Ex-Judge Edward W. Hatch argued the appeal for Dr. Gillette. Assistant District Attorney Taylor opposed the appeal. By dismissing the indictment against Gillette the Appellate Division gives District Attorney Jerome the right to appeal from its conviction. If only the conviction had been reversed the District Attorney could not appeal. Mr. Jerome was at Lakeville, Conn., yesterday, but it was said at his office that the Appellate Division's decision would be taken to the Court of Appeals.

HERRICK GOODS NOT "STOLEN"

Judgment Employer Got Against Wife of Embroiderer Is Vetoed.

Under a decision rendered yesterday in the Appellate Division of the Supreme Court an attachment obtained by Joseph Jonasson against certain furniture and jewelry in the possession of Mrs. Grace Herrick, wife of Frederick J. Herrick, must be vacated.

Frederick J. Herrick was bookkeeper for Jonasson, who was in business at 43 East Eleventh street, and Jonasson accused him of embezzling \$18,000, funds of the firm. The bookkeeper fled to New Orleans but was traced and finally consented to extradition if he was allowed to plead guilty to stealing only \$500. Jonasson after much argument agreed to this and Herrick was brought back. He pleaded guilty and is now serving sentence.

Jonasson then began a suit in the civil court to recover from Herrick and his wife, Grace, the furniture, jewelry and other accessories of their home. Jonasson alleged that all this property, valued by him at more than \$8,000, was bought by Herrick with the proceeds of his stealings from Jonasson and that therefore the property should be sold to offset Herrick's thefts.

Mrs. Herrick asserted that the property was hers absolutely and had not been bought with any of her husband's alleged stealings, but of her own money. Jonasson, however, got an attachment.

In setting aside the attachment Justice Scott for the Appellate Division says that there is nothing whatever to support the contention of Jonasson that his money went to buy the jewelry and furniture now in Mrs. Herrick's possession and that therefore the court must assume her claim of ownership to be true.

BIG NEW HOSPITAL FAILING.

Clay Under Foundation of \$500,000 Pittsburgh Structure Sinking.

Pittsburgh, June 5.—While 100 workmen were trying this afternoon to put jacks under the walls of the new homeopathic hospital that cost \$500,000 the walls began to tremble and it seemed that the structure would topple over. The building, it is expected, will fall before morning.

The hospital one of the finest in Pittsburgh for the building was put under roof a few weeks ago.

On Tuesday Pittsburgh women gave a lawn fete for the benefit of the hospital and got \$30,000. That evening cracks were noticed in the walls, and it was realized that the structure was doomed unless it could be jacked up. To-day the big building was jacked up rapidly that all hope of saving it had to be abandoned.

Architects say the foundation was laid on a structure of blue clay. The recent rains have caused springs to form which flooded the basement, and the clay was converted into a mass of mud as slippery as soap.

Contractors constructed the building according to specifications, it is said, and it is feared that the hospital will have to stand the half million dollar loss.

JURY MAKES A TRIP.

On Its Return From Scene of Alleged Crime Acquits the Prisoner.

A jury in General Sessions was unable to decide yesterday whether Mike Palovitz was guilty of attempted arson until it had looked over the premises. Palovitz was accused of attempting to fire the tenement at 101 Washington street because the janitor, "Susie Schnable," wouldn't have anything to do with him. She was the principal witness against Palovitz, her testimony being to the effect that she could see him from a window in her room. There was a conflict of testimony as to whether it was possible for Mrs. Schnable to see into the hall where Palovitz was supposed to have started the fire.

After the jury had retired they communicated to Judge Rosakaly that they would like to look at the window. With the consent of the lawyers the jury was taken to the Washington street tenement. It took the jury about an hour after it returned to court to acquit Palovitz. Then several of the jurors told Judge Rosakaly that they had been to the window and believed himself, as he had a narrow escape.

BOYCOTT THE BOYCOTTERS.

Japanese in San Francisco Retaliates for Chinese Peaceful War.

SAN FRANCISCO, June 5.—The local Japanese have decided to meet the Chinese boycott with retaliatory measures. Proclamations were posted about the Japanese quarter yesterday calling upon all loyal sons of the island Empire to withdraw their patronage from the Chinese restaurants and gambling houses.

This is only a preliminary step, and it is the intention of the leaders in the movement to extend the boycott to include every Chinese mercantile establishment in San Francisco.

PENNSYLVANIA RAILROAD

Bulletin

BY PLAIN, VALLEY, AND MOUNTAIN TO THE WEST.

The Pennsylvania Railroad route to the West is celebrated, among its other advantages, for its scenic beauty. Diversity in scenery is essential to its attractiveness. From the levels of New Jersey, through the highlands and valleys of Pennsylvania, over the Allegheny Mountains, and across the wide plains of Indiana and Illinois there is constant change revealing new scenes of activity, opening up new vistas to please the eye and refresh the imagination.

The fat farmlands of eastern Pennsylvania give place to the scenic beauties of the Susquehanna Valley, and for over one hundred miles the banks of the "blue Juniata," crossed and recrossed a dozen times, afford a moving picture of shifting scenes as pleasing as the land affords. The passage of the Allegheny Mountains, around the famous Horseshoe Curve, is matchless in its wealth of mountain views, particularly at this season.

As the hills of Ohio sink into the plains of Indiana, there are tones to the picture with the distinctive color of the West.

The nine hundred miles from the seaboard to the lakes, the one thousand miles to the central point of the Mississippi Valley harbor no monotony, each of them discloses scenes of varied interest set in an engaging environment.

Many of the fine trains of the Pennsylvania Railroad traverse the most attractive portions of this region by daylight, and the pleasure of travel over the Standard Railroad of America, with all the interior comforts of its trains, its splendid, stone-ballasted, dustless roadbed and the invigorating mountain air, is more than doubled in interest by the constantly changing panoramic effects.

FAST TRAIN OFF THE TRACK

NEW YORK BUSINESS MEN INJURED ON THE LACKAWANNA.

Cut Through Which the Train Was Running Prevented It From Turning Over—A. H. Joline, Judge Dillon and John H. Benseel Hurt—Brakeman Mortally Injured.

The fast suburban train on the Passaic and Delaware branch of the Lackawanna, which brings many New York business and professional men from their Jersey country homes to their Manhattan offices, jumped the track at 8:25 o'clock yesterday morning between Lyons and Millington, a few miles east of Bernardsville.

Charles Emmons, a brakeman, whose home is in Gladstone, was mortally hurt, and half a dozen others, including Frederick P. Olcott, former president of the Central Trust Company and the chairman of the board of trustees of that institution, were injured. The train was making perhaps thirty-five miles an hour when it struck a defective switch rail, but the steep walls of the cut through which it was running prevented the cars from overturning and acted as buffers in reducing the shock.

The train left Gladstone at 8 o'clock, picking up passengers at Peapack, Far Hills and Bernardsville. Leaving Bernardsville the two club cars, two day coaches and combination baggage and smoker were well filled. Among the passengers were Adrian H. Joline, the lawyer, who is one of the receivers of the New York City Railway Company; Judge John F. Dillon, John H. Benseel, chairman of the Water Supply Board of New York; Thomas F. Ormlston, Percy R. Pyne, Grant B. Schley of Moore & Schley, Samuel S. Childs and his wife, William H. Childs, C. Ledyard Blair, the banker; John H. Hulshizer, William Prout of Newark; William H. Page, Henry J. Hardenberg, president of the New Jersey Zinc Company; Frederick B. Post, the architect; Charles W. Squibb, George B. and D. W. Cromwell, George Balentine, a Newark manufacturer; C. Blair Mitchell, George Gaston, Harry Blase, Richard V. Lindabury and William H. Kearns of Newark. Ex-United States Senator John Dryden usually is a passenger on the train, but yesterday morning he wasn't aboard.

Between Bernardsville and Newark the train makes no stop and spins along ordinarily at from thirty-five to fifty miles an hour. Yesterday morning it was getting into its stride when the wheels came to trouble passing over a switch intersection just east of Lyons. Italian laborers have been constructing a switch which operates a spur track to the plant of the Morris County Rock Crushing Company, and it was supposed that the switch was being brought about the derailment.

The big passenger locomotive and tender shot over all right, but the wheels of the combination coach and the day coach, the jerk broke the train in two, the locomotive and tender sliding ahead a few rods and then falling against the cut. The five coaches left the rails and bumped along the ties for 300 feet or so leaning crazily against the walls of the cut.

Emmons, the brakeman standing in the open door of the coach which operated a spur track to the plant of the Morris County Rock Crushing Company, and it was supposed that the switch was being brought about the derailment.

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MISS SUSAN WRIGHT'S WILL

Agred Teacher's \$10,000 Divided Among Twenty Friends—Leaves an Explanation.

The will of Miss Susan Wright, who spent nearly fifty years of her life of over 80 years as a school teacher and whose death occurred on May 10 at her home in Brooklyn, was offered for probate yesterday.

Her only relatives are in England, but she ignores them in her will, dividing her estate, valued at \$10,000, in twenty equal parts of \$500 among intimate friends and fellow teachers. In a letter which she asked should be filed with the will she explains the reason of the distribution of her savings. This is the letter:

As the law often steps in and decides against the wishes of the testator and in favor of what are claimants I make the following explanation, which I trust will prevent all thwarting of the purposes and provisions contained in my will after my demise.

The first cause of the poverty of my parents was due to a lawsuit which my father had against his brother, John Wright, the brothers being in partnership. The suit, my father always avowed, was unjustly decided against him. The result of this decision so discouraged him and the subsequent efforts, great were so depressing and humiliating that he yielded and succumbed to drink. All know what that leads to.

In brief, my brave and high souled mother was absolutely impoverished. She resolutely determined to give me an education which should make me self-dependent and self-reliant. To accomplish this, in her extremity and with her unpreparedness against the loss of her life, she entered for me such mental and social sufferings as rarely fall to a human life of such exalted character as that of my mother. After long years of toil and without aid from any human hand, she desired to be driven to the end of her life by the narrowest economy, we managed to own our premises, 850 East Fifty-fifth street. Further details are unnecessary to be legible in this explanation.

My relatives in Great Britain and elsewhere are total strangers to me. I do not know them personally or otherwise. I have no legal technicalities and from any other real or assumed reasons, to share in my hardy struggle for earnings, in opposition to my intentions, would have been a disgrace to my mother and to the cause which she had so bravely and bravely defended. That of my beloved parents hard and bitter.

LINCOLN TABLET ON A SHIP.

G. A. R.'s Present to a Hamburg-American Liner Unveiled.

A bronze memorial tablet to Abraham Lincoln, presented to the Hamburg-American line steamship President Lincoln by the Grand Army of the Republic, was unveiled aboard the liner yesterday at her pier in Hoboken.

The tablet, which was presented by the general manager of the line, among the speakers were President Nicholas Murray Butler of Columbia University, Lieutenant The Hon. Charles G. Smith, who represented President Roosevelt; Capt. Hebbinghaus, naval attaché of the German Embassy at Washington; Charles Burrows, president of the G. A. R.; and Charles G. Burton, commander-in-chief of the G. A. R.

Lincoln was the head of the main company of the upper promenade deck and upon it is engraved Lincoln's Gettysburg address. Dr. Butler said that the only ship which has been named after Lincoln was the Grand Army of the Republic and that the only orator of modern times was Abraham Lincoln, his title to distinction.

Lincoln's title to distinction, Capt. Hebbinghaus said he hoped the memorial would "for many years to come recall to the minds of the people the noble and heroic memory of Abraham Lincoln, the strong hearted, great minded, simple minded martyr, of the highest ideals mankind ever cherished."

Lieutenant-Commander Sims said the ship would doubtless carry the tablet until she was worn out and then it would be replaced by a new one and that would carry the same name and that would carry the immortal address and finally, perhaps, the ship would be named after Lincoln. President Lincoln would take the tablet over seas.

THE ROBBERS' CACHES.

Policemen Surprised the Men at Work in a Vacant Lot Burying Junk.

Policemen John F. Haggerty of the bicycle squad was told by three women yesterday afternoon that some men were working in a vacant lot at the corner of Broadway and 110th street. When the policeman put his eye to a knothole in the billboard he saw the men at work in the lot. Haggerty charged into the vacant lot. Two of the men ran away, but he managed to catch a third one who said his name was John Garland and that he lived somewhere on West Twenty-seventh street.

Garland's story was that he was out for a walk and thought he would look at the billboard to see if he could find a place to put his junk. In the West 110th street station he was looked up as a suspicious person.

Haggerty went back to dig around a bit. He found three caches. The net product was about \$100 worth of goods, from gold pencils to gold washed collar buttons and a variety of other things. The police of the West 110th street station announced, according to old fashioned custom, that the men had been caught and covered the burying ground of a well organized band of robbers.

BALLOON TRIP FOR A CUP.

It Was to Sail 100 Miles, but Landed After Going Less Than 42 Miles.

THOT, June 5.—At noon to-day a balloon which was sailing in the air to win a \$100 cup offered by the North Adams, Mass., Herald for a flight from that place for a distance of 100 miles landed in a few miles of this city. It is forty-two miles in an air line from North Adams to this city, so the cup was not won. The balloon was in charge of N. H. Arnold of North Adams as pilot, and was accompanied by C. De Angeles Frue of New York, who it was said is connected with the Italian army and will sail from New York on Monday.

Mr. Arnold said the balloon left North Adams at 9:42 A. M. and landed at 12:30 P. M. He had what he declared is the greatest danger of aerial travelling, shots from hunters. While passing over the town of Poestenkill, he said, four bullets went by the balloon and one was very close to the basket. The highest altitude attained was 4,200 feet. The lack of wind forced a descent.

GRAND JURY SEEKS REBATES.

President of the Chesapeake and Ohio One of the Witnesses Called.

RICHMOND, Va., June 5.—George W. Stevens, president of the Chesapeake and Ohio Railway, and Hollie Gates, former member of the City Council, were the only witnesses called before the United States Grand Jury to-day in the investigation of alleged rebating on the part of the Chesapeake and Ohio.

Gates is the man who divulged the information to Interstate Commerce Commissioner Lane which made the present investigation possible. Stevens was heard first and was recalled after the testimony of President Stevens had been taken. President Stevens remained in the jury room only half an hour.

It was said this afternoon that not more than half a dozen additional witnesses will be examined, and in which event the jury will probably be ready to make a report early next week.

FOUND DEAD IN HIS CARRIAGE.

Boston Business Man Expires While Being Driven to His Home.

BOSTON, June 5.—William A. Buckley, manager of the local office of the Provident Savings Life Assurance Society, expired in his carriage in East Boston this afternoon while being driven to his home in Winthrop by Herbert Bradshaw, his coachman.

Medical Examiner McGrath will perform an autopsy to-morrow. At the office of Mr. Buckley it was said this afternoon that he had died of apoplexy.

According to the coachman's story he had been with Mr. Buckley and several others at the Hotel Plaza for some time and about 2 o'clock Mr. Buckley complained of feeling ill. He desired to be driven to his home at Winthrop, and they started in his carriage. In Chelsea street, East Boston, Bradshaw says, he looked at Mr. Buckley and thought he seemed to be fainting. He drove up to the office of Dr. Edward F. O'Shea, who just then arrived in front of his house in an automobile.

"That man has been dead from five to fifteen minutes," said the physician after an examination.

J. H. WOODWARD APPOINTED

Auditor and Assistant Auditor at Insurance Department's Office in This City.

ALBANY, June 5.—Superintendent of Insurance Otto Kelsey to-day appointed Joseph H. Woodward as auditor and assistant auditor at the New York city office of the department. The position was created at the last session of the Legislature in connection with a new bureau of audit to examine and pass upon the annual financial statements of insurance corporations. The head of the bureau will have the necessary clerks to assist in the work, which will immediately be begun. In addition to the position of auditor, a full audit of financial statements will be made of the companies which are filling their reports as of December 31 last and are ready for examination.

Mr. Woodward has had large experience as chief examiner of all classes of insurance corporations and stands high as an actuary.

Under the Armstrong amendments to the insurance law such audit was as practicable with the limited force and facilities was done in the statistical bureau of the Insurance Department.

Senator Cordis Will Not Change His Vote

On Anti-Racetrack Betting Bills.

KINGSTON, N. Y., June 5.—When the attention of Senator John N. Cordis was called to-day to a statement in a New York newspaper this morning that he, among other Senators, was believed to be lukewarm on the anti-racetrack bill he said:

"Tell them that they don't know me. Any man will vote for anything that will change around and vote another deserves to be tarred and feathered. I was in conference recently in Brooklyn with some of the party leaders, who probably were rising to the rumor. No one even intimated to me such a thing as changing my vote."

Senator Taylor to Vote for Anti-Racetrack Betting Bills.

MIDDLEBURY, N. Y., June 5.—Senator John C. Taylor of the Orange-Rockland district, who, it was reported, would not be at Albany to vote on the anti-racetrack betting bills because of his marriage and subsequent trip to Europe, will be married at 3 P. M. on June 18. Invitations for the wedding of Senator Taylor to Miss Jeanette Beakes, daughter of Mr. and Mrs. James W. Beakes of this city, were issued Tuesday. Senator Taylor has announced that he will be present at the meeting of the Legislature and vote for the anti-racetrack betting bills.

Divorce to Mrs. Benoni Lockwood, Jr.

Justice Greenbaum in the Supreme Court signed a decree yesterday granting to Lavinia Lockwood, daughter of George T. Bonner of 18 East Seventy-fifth street, a divorce from Benoni Lockwood, Jr., son of the vice-president of the New York Board of Underwriters. The Lockwoods have three children, who are given into the custody of Mrs. Lockwood with permission to Lockwood to see them at such times as may be agreed upon later. There is no alimony provision in the decree.

OBITUARY.

The Rev. James Patrick Corrigan, for the last sixteen years chaplain to the House of Representatives at the University of N. J., died on June 3. The funeral will take place to-day at St. Patrick's church. He was born at Franklin Furnace, N. J., in 1864, and studied at St. Charles's Seminary, in Maryland, and at Seton Hall University, in New Jersey. He was ordained in 1891 and was then appointed chaplain of St. John's in Paterson. Soon after he became chaplain of the University of N. J. and was made resident chaplain to the House of Divine Providence, where he remained until his death. He was a member of the churches at St. Luke's and Park Ridge and an Italian church at Etos, N. J., and served them all, often preaching twice on Sunday.

Alexander Wilhelm Gottschalk, the noted organist and composer, is dead, at the age of 76. He was born in Germany and was associated with Franz Liszt. He had been a member of the New York Philharmonic and had a collection of the finest selections of organ music. Gottschalk was a member of the Union and Racquet clubs. His funeral will be held on Sunday. Interment will be in Boston.

John West Horner, a retired real estate broker of 241 West 114th street, died yesterday at St. Luke's Hospital. He was born fifty-nine years ago in Philadelphia and was the son of the late John West Horner and Maria Lansdale Horner. He lived in this city for many years. He was married to Mrs. Horner, who died in 1891. He was a member of the Union and Racquet clubs. His funeral will be held on Sunday. Interment will be in Boston.

The Rev. Addison Kelly is dead at his home in Fishkill Landing at the age of 84 years. He was a retired Baptist clergyman. For many years he had charge of churches in Putnam and Dutchess counties. His children survive.

Out To-day

Not Since Marie Bashkirtseff's Diary has so

Personal and Intimate an Individual Record

of Experience and the Joy of Living Appeared

Julie's Diary